

## REMARKS

Claims 1-3, 5, 17-22, 24, and 26 are pending in this application. Dependent Claims 4, 6, 23, and 25 have been canceled, and their subject matter has been incorporated into Claims 1 and 17. Claims 7-16 and 27-43, which were previously withdrawn due to a restriction requirement, have been canceled. Reconsideration and allowance of all remaining, examined claims (Claims 1-3, 5, 17-22, 24, and 26) are respectfully requested.

## TELEPHONE INTERVIEW WITH EXAMINER

On Wednesday, April 26, 2006, Mr. William Wang conducted a telephone conference with Examiner Kuhns to discuss the claims at issue and the Final Office Action dated March 9, 2006. Examiner Kuhns maintained her written-description rejection under 35 USC 112, first paragraph. The Examiner expressed concern that Applicants' claim language, "dent corn," is not supported by their Specification because the word "dent" is never explicitly mentioned. Mr. Wang urged that one skilled in the art would generally interpret the ingredient "corn" as meaning "dent corn" and not "waxy corn" when the product is intended for human consumption. It is Mr. Wang's understanding and the Applicants' understanding that waxy corn is usually reserved for livestock feed. Mr. Wang noted: MPEP 2163.05 III (explaining that "ranges found in applicant's claims need not correspond exactly to those disclosed in [the spccification]; [the] issue is whether one skilled in the art could derive the claimed ranges from the [] disclosure."); Ellis at column 8, Table 2 (showing color intensity and flavor intensity of thermally-processed masa mixtures of dent corn and waxy corn, with waxy corn producing significantly lighter color and reduced flavor intensity); Applicants' Specification, page 4, lines 1-15, and Applicants' Specification at page 5, lines 12-13 (teaching that a dark color and a strong toasted flavor are

critical attributes of their claimed food additive). Examiner Kuhns was not persuaded, and she recommended that Applicants submit a formal response to the Final Office Action.

#### **Claim Rejections - 35 USC §112**

Examiner states on page 2 in this Office Action as follows:

Claims 1-6 and 17-26 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is insufficient support for the newly added limitations that the corn kernels consist essentially of dent corn and that the masa dough is derived essentially from dent corn.

For reasons discussed below, Applicants respectfully traverse this rejection under 35 U.S.C. § 112, first paragraph.

Applicants have amended the claims such that the claims no longer contain the objected-to language – “the corn kernels consist essentially of dent corn” and “the masa dough is derived essentially from dent corn.” The rejection of claims under 35 U.S.C. § 112 is therefore believed to be moot, and Applicants respectfully request that such rejection be withdrawn.

#### **Claim Rejections and Examiner’s Response - 35 USC §103**

Examiner states on page 2 in this Office Action as follows:

Claims 1, 4, 5, and 6 are rejected under 35 U.S.C. §103(a) as being unpatentable over “Salmon Patties” in view of Ellis for the reasons set forth in the previous office action.

Claims 2 and 3 are rejected under 35 U.S.C. §103(a) as being unpatentable over “Salmon Patties” in view of Ellis in further view of “A Dinner Experiment” and “Dried Food Products” for the reasons set forth in the previous office action.

Claims 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Food Products Design” in view of “Salmon Patties” and Ellis for the reasons set forth in the previous office action.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of “Salmon Patties,” for the reasons set forth in the previous office action.

The Examiner, in response to Applicants' previously-presented arguments, further states on page 3 of this Office Action:

Applicant argues that Ellis relates to snack foods made from waxy corn and therefore teaches away from a product consisting essentially of dent corn. However, Ellis discloses the food product comprising a blend of dent and waxy corn (column 2, lines 31-34) and the claim language does not completely exclude the inclusion of waxy corn.

Applicant also argues that the prior art teaches away from the use of waxy corn to produce products intended for human consumption and cites Murray in support of this. It is not seen how this argument relates to the claims at hand. Ellis, which is a more recent patent than Murray, clearly illustrates that waxy corn products can indeed be used for human consumption and also discloses corn chips with the claimed properties. Therefore, the reference has been properly applied.

Applicant argues that Ellis is directed to producing low-oil content corn products having a tender texture and derived from waxy corn and teaches away from Applicant's low-oil-content flavor additive made from traditional dent corn. However, the claim language of "consisting essentially of" still leaves room for some waxy corn and therefore, the teachings of Ellis still read on the claimed invention.

Applicant also argues that the use of waxy corn would materially affect the basic and novel characteristics of Applicant's claimed invention. In support of this, Applicant points to disclosures in Ellis teaching a lighter color due to the use of waxy corn. However, as discussed above, the claim language does not exclude the blend taught by Ellis. Also, no evidence has been submitted demonstrating the differences in the color and other characteristics, to which Applicant refers, of the claimed invention and that of Ellis.

This rejection is respectfully traversed. Applicants hereby incorporate their previously-presented arguments regarding the rejections under Section 103, which arguments appear in Applicants' January 23, 2006 Response to the Office Action of September 23, 2005. Additional arguments are also presented below.

Note, however, that Applicants' claims, as amended, no longer include the objected-to language, "dent corn" or "consisting essentially of." Thus, the Examiner's arguments regarding dent corn and waxy corn have been rendered moot, and Applicants respectfully request that the rejection of claims under Section 103 be withdrawn.

Note that Ellis and "Salmon Patties," alone or in combination, do not teach or suggest all elements of Applicants' claimed invention, as required by Section 706.02(j) of the MPEP. Dependent Claims 4, 6, 23, and 25 have been canceled, and their subject matter has been incorporated into Claims 1 and 17. Amended Claim 1 (as well as dependent Claims 2-3) and amended Claim 17 (as well as dependent Claims 18-22, 24, and 26) require that the regrind exhibit "a dimethyl-ethyl-pyrazine concentration of at least about 0.23 ppm" and "a colorimeter L-value of approximately 50 but no greater than about 64." As previously explained in Applicants' April 26, 2005 Response to Office Action dated January 26, 2005, page 17, lines 7-24, support for the dimethyl-ethyl-pyrazine (DMEP) concentration limitation can be found on page 28 of Applicants' Specification, as well as in Applicants' Figure 5. Support for the L-value limitation can be found on page 20, lines 4-15, of Applicants' Specification: "As L-values measure the lightness of a sample, the TCF sample's lower L-value demonstrates that TCF additive is darker in color than dry corn masa and corn germ flavoring." In the same paragraph, Applicants note a specific example in which "[t]he TCF sample had a significantly lower L-value (L-value of 49.2) than the Cargill Flavor Enhancer (L-value of 64.1)." In fact, a word search for the terms "L-value" and "pyrazine" confirms that there is no mention or suggestion of such L-value and DMEP concentration limitations in Ellis or "Salmon Patties," alone or in combination.

In light of the amendments and arguments presented above, Applicants submit that the totality of the evidence shows that Applicants' invention defined in their Claims would have been non-obvious at the time of their invention.

**CONCLUSION**

In light of the amendments and the arguments made by Applicants above, as well as the evidence previously submitted, Applicants submit that all existing, examined claims are now in a condition for allowance. Applicants respectfully request that Examiner withdraw all restrictions and rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of telephone conference, the Examiner is invited to call Colin Cahoon or William Wang at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, LLP Deposit Account 50-0392.

Respectfully submitted by:



Dated: May 9, 2006

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Chad E. Walter  
Registration No. 54,625  
CARSTENS & CAHOON, LLP  
P.O. Box 802334  
Dallas, TX 75380  
(972) 367-2001  
(972) 367-2002 Fax

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**eFiled Application Information**

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First Named Inventor	Sheri Lynn Baker
Customer Number or Correspondence Address	22858
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**Application Details**

Submitted Files	Page Count	Document Description	File Size	Warnings
RFOA_3_9_06.pdf	11	Amendment After Final	555076 bytes	◆ PASS

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If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

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